IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9907 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION LIMITED - Petitioner(s)

Versus

HEMUBHAI DHANJIBHAI BAVADIA - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner(s) : 1,
MR GK RATHOD for Respondent(s) : 1,
MR MUKESH H RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/09/2005

ORAL JUDGMENT

1.In the present petition, the State Road Transport Corporation has challenged the legality of an Award dated 13.07.2004 passed by the Labour Court, Amreli.

By the impugned Award, the reference of the respondent workman was allowed partially. His dismissal Order dated 17.06.1999 was set aside. He was ordered to be reinstated without backwages. No further punishment was provided for.

2. Respondent was working as a driver. He caused an accident on 10.02.1998. On account of the accident, the bus received extensive damage and passengers also received various injuries. A charge-sheet dated 26.05.1998 came to be issued against him. Upon departmental inquiry, the disciplinary authority dismissed the respondent from service. Respondent challenged his dismissal before Labour Court by filing Reference (LCA) No. 69/01. While disposing of the reference proceeding, the Labour Court observed that the punishment imposed was harsh and excessive. It was observed that there was no past record of the workman adverse to him. The Labour Court also observed that it not possible to ascertain with accuracy as to due to whose negligence, the accident took place.

3. While issuing notice on 3rd August 2005, this Court had broadly indicated enhancing the punishment

against the workman.

4. From the material on record, it can be seen that the factum of accident was proved. Damage to the bus and injuries to the passengers were not in dispute. It was therefore not open for the Labour Court to observe that the workman was not negligent. Having no previous record of adverse nature also is of no consequence since the workman was discharging his duties since only about 2 years. In that view of the matter, even if the Labour Court found that the Order of dismissal was harsh and excessive punishment, considering the charges against the workman, he ought not to have been allowed to go scot free without any punishment.

5. Considering the above aspects of the matter, Award of the Labour Court calls for interference. Both the learned Advocates requested this Court to provide for appropriate punishment instead of remanding the matter to the disciplinary authority for imposing punishment on the workman. Considering the submissions made and considering the situation obtaining on record, in addition to providing that the workman will not be entitled to any backwages for the entire period from the date of dismissal

till his reinstatement, if the same is carried out within a period of 1 month from today; it is further provided that punishment of withholding of 2 increments with future effect will also be imposed on him.

6. If the workman is not reinstated within a period specified hereinabove, it will be open for him to prospective wages from the end of the said period. With these directions, the impugned Award stands modified. Rule made absolute to the above extent. No orders as to costs.

(Akil Kureshi, J.)

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